IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 101 of 1997
With
INCOME TAX REFERENCE No. 102 of 1997
To
INCOME TAX REFERENCE No. 103 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
APARNA FAMILY TRUST, - Respondent(s)

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Appearance :
MRS. MONA R BHATT for Applicant(s) : 1,
MR SN SOPARKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The parties submit that the Tribunal, while deciding the matters has relied upon its earlier judgment in the matter of Sanjiv Family Trust and issued certain directions. The said matter of Sanjiv Family Trust was referred to this Court and ITR No. 149/95 was accordingly registered. The parties submit that ITR No. 149/95 with its analogous matters is finally disposed of on 13.7.06, order passed in the said matter has been set aside by this Court and the matter has been remanded back to the Tribunal with certain directions. The parties submit that as the very foundation of the order impugned has become nonest, the orders passed by the Tribunal may be set aside and the matters be remanded back to the Tribunal with directions as issued in the matter of Sanjiv Family Trust.
2. After hearing the parties and going through our order, dated 13.7.06 in the matter of Sanjiv Family Trust Vs. CIT in ITR No. 149/95, we are of the opinion that the submissions made by the learned counsel for the parties must be accepted.
3. The orders passed by the Tribunal in each of the case are hereby set aside. Without deciding the questions, we remand the matter to the learned Tribunal with a direction that the Tribunal

shall reconsider the entire matter and redetermine the liability of the assessee, that is, the beneficiary of the first level Trust. It would be open to the Tribunal to reconsider the matters afresh and decide the matters in accordance with law after taking into consideration the judgments in the matter of McDowell & Co. Ltd., v.. C.T.O., reported n 154 IR 148, Union of India Vs. Azadi Bachao Andolan reported in 263 ITR 706, 209 ITR 101 and 231 ITR 540 on which reliance is placed by the parties. As we are remanding the matters back to the Tribunal, we refuse to make any observations on the merits of the matters as the same is likely to adversely affect the rights of either party. The References are accordingly disposed of. No costs.

[R.S. GARG, J.]

[M.R. SHAH, J.]

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